

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557-1030; SJCReporter@sjc.state.ma.us

SJC-12939

MIGUEL VAZQUEZ vs. SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION, NORFOLK.

May 29, 2020.

Supreme Judicial Court, Superintendence of inferior courts.  
Moot Question. Practice, Civil, Moot case. Parole.  
Imprisonment, Parole.

The petitioner, Miguel Vazquez, appeals from a judgment of a single justice of this court dismissing as moot his petition pursuant to G. L. c. 211, § 3. We affirm.

Vazquez has been imprisoned since 1990, serving a life sentence after being convicted of murder in the first degree. In January 2020, the Commissioner of the Department of Correction (department) granted his request for medical parole pursuant to G. L. c. 127, § 119A, conditioned on release to a suitable nursing home or medical facility appropriate for treating his medical needs. Two months later, in March 2020, while he was still in prison, Vazquez filed his G. L. c. 211, § 3, petition asking this court to order his release. He argued that the department had failed in its duty, pursuant to both the medical parole statute and this court's recent decision in Buckman v. Commissioner of Correction, 484 Mass. 14 (2020), to timely release him after granting him medical parole. The respondent opposed the petition, arguing that despite its best efforts, it had thus far been unable to locate a suitable facility for Vazquez; that its efforts were ongoing; and that it was, at that time, awaiting a decision on a potential placement. And, indeed, while Vazquez's petition was pending, a suitable

placement was found and Vazquez was released. The single justice thereafter dismissed the petition as moot.<sup>1</sup>

Vazquez now appeals from that dismissal. He recognizes, as he must, that he "no longer has a personal stake in the outcome" because he has been released. He argues that the full court should nonetheless consider issues related to the timing of medical parole plans -- for example, that inmates who have been granted medical parole allegedly are not being released in a timely manner -- because the issues are capable of petition yet evading review. See, e.g., Buckman, 484 Mass. at 16 n.5.

It is true that this court (and its single justices) can, as a matter of discretion, decide issues that are moot when they are capable of repetition yet evading review. Lockhart v. Attorney Gen., 390 Mass. 780, 782-783 (1984). The single justice here exercised her discretion not to do so. The only issue that is before us in this case, therefore, is whether the single justice abused her discretion in dismissing the petition on the basis that it was moot and in choosing not to decide the issues or report them to the full court; in other words, whether the single justice was required to decide the issues or to report them. This is not a case in which a single justice's decision was made prior to the case becoming moot, where the issues become moot during the pendency of the appeal to the full court, and where the petitioner asks the full court to exercise its discretion to consider the merits of the petition. We are concerned only with whether the single justice abused her discretion. See Commonwealth v. Rodriguez, 484 Mass. 1047, 1048-1049 (2020) (discussing abuse of discretion standard when single justice exercises discretion not to address substantive merits of G. L. c. 211, § 3, petition). We find no abuse of discretion.<sup>2</sup>

Judgment affirmed.

---

<sup>1</sup> The single justice also denied the petitioner's motion to report questions to the full court and his motion to join his case with another case that was then pending in the full court. See Committee for Pub. Counsel Servs. v. Chief Justice of the Trial Court, 484 Mass. 431 (2020).

<sup>2</sup> We also note that the legal issues raised in this petition have been reserved and reported by another single justice in a different case. See Robert Malloy & another vs. Department of Correction, SJC No. 12961.

The case was submitted on the papers filed, accompanied by a memorandum of law.

Ruth Greenberg for the petitioner.